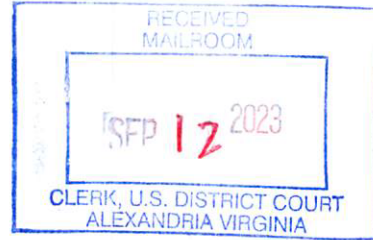


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



ROY L. PERRY-BEY
CARLOS A. HOWARD

Petitioners,

vs.

CIVIL ACTION NO:1:23cv11659

DONALD JOHN TRUMP
VIRGINIA STATE BOARD OF ELECTIONS, et al.,
VIRGINIA DEPARTMENT OF ELECTIONS, et al.,

Respondents.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

A. Jurisdiction

1. Petitioners are members of a minority group and their right to vote has been abridged on account of their race or color and brings this action for declaratory and injunctive relief against Trump's overt interference to undermine or deprive them of their right to participate equally in secure, free and fair elections, due to Trump's filing a statement of candidacy to participate in the 2024 Presidential Primary election(s), and after Trump's criminal referral to the Department of Justice in 2022 from the U.S. Congress January 6, Committee of obstructing an official proceeding, conspiracy to defraud the government and inciting or assisting an insurrection; Mr. Trump was formally charged with four felonies; including insurrection against the federal government; Donald J. Trump, knew or should have known triggered "disqualification clause" of Section 3 of the 14th Amendment.

Petitioners allege that Virginia State Board of Elections and Virginia Department of Elections failed to determine candidate Trump's eligibility or whether he is constitutionally prohibited from seeking a second term as President of the United States or file a petition for a writ of quo warranto, which must be filed in the United States District Court for the District of Columbia that may only be filed by the sovereign or a representative thereof. See *id.* at *2; D.C. Code § 16-3503; Drake, 664 F.3d at 784-85. Encompassed within this request for declaratory relief is a further determination as to whether Trump filing with the FEC Nov. 2022 declaring himself a candidate for the presidency and establishing a campaign committee was improper or fraudulent and if Trump is disqualified to participate in 2024 Presidential Primary election(s) and ballot in Virginia. In bringing this request for declaratory and injunctive relief Petitioners have carefully studied the specific provisions of Section 2 of the Voting Rights Act of 1965, as amended 42 U.S.C. 1973 et seq., Section 3 of the Fourteenth Amendment which govern whether an individual who participates in an overt insurrection or rebellion against the U.S. government and election officials legal duty to determine the eligibility and qualification of Mr. Donald John Trump from service in the federal government, whether as a Representative, U.S. Senator, President or Vice-President of the United States.

Petitioners African American registered voters assert that they have a "personal stake" in the dispute and that they are being denied the right to participate equally in elections and elect representatives of their choice based on their race or color by election officials omission to perform a required duty or the failure to act when a duty to act existed to determine the eligibility, qualification or removal of Donald J. Trump from contaminating or participation in the 2024 Presidential Primary election(s) that has discriminatory purpose(s) or effect(s) in violation of Article 5, Va. Code § 24-539 et seq., Section 3 of the 14th Amendment and Section 2 of the Voting Rights Act of 1965, as amended 42 U.S.C. 1973 et seq.,

It should be noted that in the course of these past Presidential elections, Petitioner has cast their vote for both Democratic and Republican and was a registered Independent for many years.

2. This Court has original jurisdiction of this action pursuant 28 U.S.C. §§ 1331, 1343, 2201 and 2202 and 42 U.S.C. § 1973.

B. Parties

3. Petitioner Roy L. Perry-Bey an African American U.S. citizen of the United States, legal resident and registered voter of the Commonwealth of Virginia.

4. Petitioner Carlos A. Howard an African American U.S. citizen of the United States, legal resident and registered voter of the Commonwealth of Virginia.

5. Petitioners are members of a minority group and that their right to vote has been abridged on account of their race or color brings this action pursuant to Section 2 of the Voting Rights Act of 1965, as amended 42 U.S.C. 1973 et seq., Section 3 of the 14th Amendment and Respondents have acted or refused to act according to the U.S. Constitution and laws, thereby making appropriate final declaratory and injunctive relief.

6. The Respondents Donald John Trump, twice impeached and indicted former president under FBI investigation, Virginia State Board of Elections, and Virginia Department of Elections.

7. At all relevant times, administration election officials, it appears by combined action or in concert with Donald J. Trump were and have been acting under the color of law, or statutes, ordinances, regulations, customs, and usages of the Commonwealth of Virginia and the United States Constitution and laws.

C. Facts

8. The facts of this case are undeniably simple. Donald John Trump served as the 45th President of the United States having won the election in 2016 and was inaugurated on Jan. 20, 2017.

9. He served for four years until he lost the 2020 Presidential Election to Joseph R. Biden, Jr. who took office Jan. 20, 2021.

10. President Trump chose not to appear at the inauguration of his successor. Having left for his estate in South Florida while the ceremony was taking place.

11. On January 6, 2021, after giving a speech to a throng on the Ellipse near the Capitol, President Trump exhorted the throng to march to the Capitol and told them that he would be right there with them.

12. After he was finished with his speech, Trump returned to the White House and watched the later events unfold on television.

As we are well aware, the throng marched on the Capitol, forced their way into the Capitol building, ransacked the rotunda area, and even made their way into several offices of representatives and senators. As the confirmation of the results of the election were being undertaken in the House, alarms went off and the members scurried into safe tunnels and secure rooms in the basement of the Capitol.

13. Of note. Vice President Mike Pence missed being reached by some of the throng by a matter of seconds as he made his way down the stairwell to a secure area. Eventually, several high-ranking members of the government were shuttled to a safe area at Fort McNair in SW Washington. Of note, President Trump had sent out a tweet the day before claiming that "January 6th will be wild".

14. Trump also later remarked that the insurrectionists who had breached the Capitol were "special" and that "we love you".

TAKE NOTICE: "The former president's efforts to overturn the 2020 presidential election, and resulting attack on the U.S. Capitol, place him squarely within the ambit of the disqualification clause, and he is therefore ineligible to serve as president ever again. J. Michael Lutting, Federal Appellate Judge & Laurence H. Tribe, Harvard Law Professor.

15. He also later remarked that had Vice-President Pence simply done his job and refused to certify the results of the election that everything would have been fine.

16. Not for several hours were the National Guard called in to quell the insurrection as allegedly President Trump refused to do so and had been mesmerized by the events that were taking place on his television at the White House.

17. Since the events of January 6th, attack on the U.S. Capitol hundreds of insurrectionists have been charged and tried and convicted on charges ranging from simple mischief, seditious conspiracy, obstruction of an official proceeding to assault and battery upon Capitol police officers.

18. A number of individuals actually lost their lives that day as a result of the mayhem.

19. Recently, the Special Counsel, Jack Smith, who had been appointed by the U.S. Attorney General, submitted his findings on the events of January 6th, to an em-paneled grand jury in D.C. which returned indictments against former President Trump for, among other things, rebellion or insurrection against the U.S. federal government. Trump was arraigned on these charges and now awaits trial March 4, 2024. D.C. Grand Jury Returned Indictments Exhibit(s) B.

20. It should be noted at least cursorily that Donald J. Trump has also been formally indicted on charges of holding top secret

classified documents at his home in Palm Beach, Florida, which is a federal offense, and has also been indicted by the City of Manhattan and State of Georgia for other election related theft crimes, rape, hush money payments, and falsifying business records related to hush money payments he'd made. However none of these other crimes have the effect of preventing former President Trump from seeking reelection in November, 2024.

21. Of note, The Jan. 6 select House committee voted to refer former President Donald John Trump to the Department of Justice for criminal investigation and potential prosecution for trying to overturn the 2020 election Exhibit(s) A.

22. The criminal referral of Trump accuses him of obstructing an official proceeding, conspiracy to defraud the government, and inciting or assisting an insurrection or rebellion.

THE LAW ON THE MATTER OF INCITING INSURRECTION AGAINST THE FEDERAL GOVERNMENT

23. The Fourteenth Amendment to the United States Constitution was ratified in 1868 in the shadow of the Civil War and was designed to represent a new birth of freedom for previously disenfranchised citizens.

24. Of particular note, Section 3 of the 14th Amendment, automatically excludes from future office and position of power in the U.S. government and as well, from any office and position of power in the sovereign states and their many subdivisions,

any individual who has previously taken an oath to support and defend our Constitution and after which acts so as to rebel against that charter, either via overt insurrection or by giving aid or comfort to the Constitutions' enemies.

25. In carefully analyzing this language embedded in the U.S. Constitution, numerous legal scholars have wrangled with the preeminent issue of whether an actual conviction is necessary to trigger the prohibition of running for office.

26. The "disqualification clause" has been determined to operate completely independently of any pending criminal proceedings and also independent of any impeachment proceedings or congressional legislation.

27. Former federal judge Michael Lutting of the U.S. Court of Appeals for the Fourth Circuit and noted legal scholar Laurene Tribe have both come to the inescapable conclusion that the "disqualification clause" was designed to operate directly and immediately upon this certain individuals who betray their oaths to the U.S. Constitution, whether by taking up arms to overturn our government or by waging war on our federal government by attempting to overturn the results of a presidential election through a bloodless coup.

28. President Trump's efforts both in Washington, as well as in Georgia and perhaps other states, as well as the consequential assault on the US Capitol, put Trump at the center of the

disqualification clause, and as a result of which, it appear make him ineligible to ever serve in federal office again.

29. Now given that the facts and law seem to be crystal clear that Trump was involved to some extent in the rebellion or insurrection that took place on January 6th, the sole remaining question is whether American jurists who swear an oath to uphold the U.S. Constitution upon their entry to the bench, will choose to follow the letter of the U.S. Constitution in this case.

30. The January 6th 117th Congress Second Session Final House Report 117-000; D.C. Grand jury Indictments, Donald J. Trump, FEC Statement of Candidacy; Georgia Indictment of Trump that is hereby incorporated herein and made a part hereof by reference as if set forth in full attached hereto as Exhibit(s) A,B,G & I.

31. Of particular note in this regard is that during his one term in office, former President Trump had the opportunity to appoint three new Supreme Court justices to he high court.

32. Each of these three jurists, Justice Neil Gorsuch, Justice Brett Kavanaugh and Justice Amy Coney Barrett are viewed as conservative jurists who err on the side of a strict construction of the US Constitution.

33. In their decision to overturn the long standing case law of Roe v. Wade, the justices found that there was no "right of privacy" imbued in the Constitution and none could be fashioned out of whole cloth. Rather the most difficult decisions that the

Court is forced to make such as whether a woman has the inherent right to abort her unborn child, is one that must be decided by looking at a very strict construction of the Constitution as our Founding Fathers saw fit to provide.

34. Interestingly enough, Section 3 of the 14th Amendment, which provides for the disqualification of an individual who commits insurrection against our government has remained on the books for some one hundred and fifty plus years without ever facing question as to its legitimacy.

35. While one can certainly argue that it has not been thoroughly tested, that fact is only because we have not faced an insurrection against our federal government such as the one while we faced on January 6, 2021.

36. It should also be noted that President Trump has since made statements to the effect that should he be elected, he would advocate the total elimination of the U.S. Constitution and the creation of a new charter more in line with his personal values.

37. The 14th Amendment was promulgated and subsequently ratified in the context of post Civil War America when even after losing the Civil War, southern states were sending men to Congress who had held prominent roles in the Confederacy and supported acts of insurrection against the United States.

38. Any number of top legal scholars, including but not limited to Judge Lutting and Laurence Tribe conclude that Section 3 of the 14th Amendment requires absolutely no legislation, criminal conviction or other judicial action to enforce its command.

39. In legal terms, Section 3 is completely "self-executing".

40. They conclude that disqualification subject to Section 3 does not constitute a punishment or a deprivation of any: liberty "or" right" as much as one who fails to satisfy the Constitution's qualifications does not have an absolute right to serve in a public office much less the presidency.

41. Lastly, the scholars conclude that Section 3 is expansive and all-encompassing is what it regards as "insurrection or rebellion" against the constitutional order of the United States..

42. Taken along these same lines, had it been conclusively proven that Barack Obama had not been born in Hawaii but rather outside of the U.S., the Constitution would have conclusively barred him from seeking the Presidency.

43. Petitioners are convinced that there would have been no "wiggle room" to allow Trump to escape that Constitutional requirement. Furthermore, had former President Trump merely been thought by many individuals to have engaged in an insurrection against the federal government, that would not have sufficed to trigger Section 3 of the 14th Amendment.

44. However, the mere fact that he has been formally indicted for various felonies including insurrection against the federal government mandates that Section 3 of the 14th Amendment be triggered.

45. The bottom line here is that President Trump Donald J. Trump both engaged in an insurrection and also gave aid and comfort to other individuals who were engaging in such actions, within the clear meaning of those terms as defined in Section Three of the 14th Amendment and administration election officials having a duty to protect democracy failed to determine the eligibility or disqualification and remove Trump based on the facts and law.

46. Assuming that the public record to date is accurate, and we have no evidence to the contrary, it appears Trump is no longer eligible to seek the office of the President of the United States, or of any other state of the Union. See: U.S. House of Representatives Final Report Select Committee To Investigation January 6th Attack On The United States Capitol. Exhibit(s) A.

47. As such, this Court having the innate power to rule as to the tenets of the U.S. Constitution, is abjectly required to find that Donald John Trump's actions with respect to the January 6th uprising, and specifically the fact that he has been indicted for said acts, it appears have effectively disqualified him from seeking the office of the President of the United States.

48. It appears has effectively barred him from participation in the Virginia Presidential primary election(s) for President and appearing on the ballot next spring in 2024.

49. While Petitioners fully understand that their seeking this declaratory judgment places great pressure on the jurists who will be tasked with hearing this case, we believe that the law is abundantly clear as to the issues at bar and that if the jurists are ready to follow the specific language of the U.S. Constitution in this regard, the decision should be a relative easy one.

D. Relief

50. WHEREFORE, Petitioners respectfully asks this honorable Court to enter a declaratory judgment or decree that Virginia State Board of Elections and Virginia Department of Elections make a determination based on the law and overwhelming evidence that Donald John Trump statement of candidacy is improper and that he is barred from seeking the office of President of the United States and further, is barred from participating in the 2024 Presidential Primary election(s) and appearing on the general elections ballot in Virginia next year in the spring.

(a) Declare pursuant to 28 U.S.C. § 2201 and 2202 that the Virginia State Board of Elections and Virginia Department of Elections, failure to act, despite their legal duty to act, materially benefit Trump, has discriminatory purpose or effect

that unlawfully deprives Petitioners African American citizens right to participate equally in elections and elect candidates of their choice in violation of Section 2 of the Voting Rights Act of 1965, as amended 42 U.S.C. 1973 et seq., Section 3 of the Fourteenth Amendment to the United States Constitution,

(b) Grant preliminary or permanent injunctive relief restraining and enjoining administration election officials, their officers, agents, employees, attorneys, successors in office, and all persons in active concert and participation with them, the "listing of candidate Donald John Trump on the Presidential Primary and General Elections ballot in 2024, in accordance with Article 5, Va. Code Section 24-539 and 24.2-612.1 et seq.,

(c) Enjoin Trump's participation in any future elections for public office, based on a determination of disqualification.

(d) Grant petitioners relief from Donald John Trump elections interference and undermining the purity or integrity of our elections as a "candidate' under Virginia and federal law from participation in the 2024 Presidential Primary election(s) in Virginia, including but not limited to ordering into effect removal of Donald John Trump's name appearing on the general elections ballot which provides the Petitioners African American citizens and registered voters of the Commonwealth of Virginia with a federal remedy for the above-stated violations of their rights and laws.


(e) Virginia State Board of Elections and Virginia Department of Elections shall not adopt any practice contrary to law in determining the eligibility or disqualification of candidates for federal office that does not comply with Section 2 of the Voting Rights Act or election laws, and that the Virginia State Board of Elections and Virginia Department of Elections shall not implement or utilize any practice, policy, procedure, or other action that results in the deprivation of Petitioners African Americans participation in the electoral process or deficiencies which make eligibility or qualification findings are in violation of Section 3 of the 14th Amendment of the United States of America.

(f) Grant petitioners their court cost, necessary expenses of the litigation and travel expenses.

(g) Grant petitioners members of a minority group and that their right to vote has been abridged on account of their race or color such further and other relief as may be just and equitable.

September 11, 2023

Respectfully Submitted,


CARLOS A. HOWARD


ROY L. PERRY-BEY

CERTIFICATION OF SERVICE

I hereby certify that on this 11th day of September 2023 a true copy of the foregoing copy was mailed postage paid USPS to Donald John Trump, Mar-a-Lago Club, 1100 S. Ocean Blvd., Palm Beach, Florida, 33480, Virginia State Board of Elections and the Virginia Department of Elections, Washington Building 1100 Bank Street, First Floor, Richmond, Virginia 23219.



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